

## **CORRECTIVE ACTION PLAN AGREEMENT**

### **I. INTRODUCTION**

1.1 This Corrective Action Plan Agreement (CAP Agreement) is entered into by the Washington State Department of Health Hospitals Program (referred to as "the Program") and Vest Seattle LLC., DBA Smokey Point Behavioral Hospital (referred to as "the Hospital"). The Program and the Hospital are collectively referred to as "the Parties."

### **II. RECITALS**

The following is set forth as informational background related to survey and complaint investigation events leading up to this CAP Agreement.

2.1 On or about June 8, 2017, the State of Washington issued the Hospital a license to operate as a private psychiatric hospital. The Hospital's license is active.

2.2 In addition to being a state licensed private psychiatric hospital, the Hospital is a federally certified hospital subject to meeting Conditions of Participation (CoP) in 42 CFR part 482. The Program surveys federally certified hospitals on behalf of the federal Department of Health and Human Services Centers for Medicare & Medicaid Services (CMS) to determine compliance with CoP. Thus, the Program surveys both on behalf of CMS for compliance with CoP and on behalf of the State of Washington for compliance with state licensing regulations. The Program may use evidence gathered and findings made during CMS certification surveys as evidence that a CMS certified facility has failed or refused to comply with applicable state licensing laws. However, this CAP Agreement pertains only to the Program's state licensing surveys described in paragraphs 2.5, 2.6, 2.7, and 2.8 of this section.

2.3 On or about March 15, 2018, the Program completed a state licensing, state complaint and Medicare complaint investigation surveys of the Hospital. The Program completed a state licensing survey of the Hospital for compliance with chapters 71.12 RCW and 246-322 WAC, and issued a SOD which identified the Hospital's failure to meet standards in the areas of: Disclosure Statement, Policies-Admit Criteria, Policies-Treatment, Policies-Patient Rights, Policies-Infection Control, Procedures-Behavior, Admin-Appoint Staff, Admin Rules-Functions, Admin Rules-Performance Evals, Provide Patient Services, Exam & Medical History, Treatment Plan-Comprehensive, Referrals, Nursing Services, OT Services, Restraint Observations, Physician Authorization, Records-Signed Orders, Records-Observations, and Procedures-Administer Meds. The Program also substantiated allegations in state complaint no. 2018-2823 related to patient safety, patient rights, and staffing under chapter 246-322 WAC.

2.4 On or about August 22, 2018, the Program completed a state complaint investigation survey related to complaint nos. 2018-11162 and 2018-11389. The

Program substantiated allegations related to Policies-Admit Criteria and Provide Patient Services under chapter 246-322 WAC.

2.5 On or about January 17, 2019, the Program completed a state licensing survey of the Hospital for compliance with chapters 71.12 RCW and 246-322 WAC and investigated issues related to complaint nos. 2018-16078, 2018-17308, 2018-17557, 2018-17724, 2018-17798, 2018-18050, 2018-18052, 2018-18054, 2018-18062, 2018-18218, 2019-39, and 2019-882. **This survey resulted in the issuance of the March SOD, which is incorporated by reference and attached to this CAP Agreement as Attachment 1.**

2.6 As documented in the March SOD, the Program surveyors identified deficiencies at the Hospital that did not meet the standards identified in chapters 71.12 RCW and 246-322 WAC. Based on the March SOD, the Program alleges the Hospital has failed or refused to comply with the following laws and rules: Chapter 71.12 RCW; WAC 246-322-035(1)(c)(d),(2); WAC 246-322-040(5),(8)(i); WAC 246-322-050(1)(a),(6)(a-g)(i), (7)(a)(b), (12)(g); WAC 246-322-100(1)(g), (3)(d); WAC 246-322-120(1); WAC 246-322-170(2)(e)(h); WAC 246-322-180(1)(d), (2); WAC 246-322-200(3)(e); WAC 246-322-210(3)(c)(h); WAC 246-322-220(1),(2); and WAC 246-322-230(1),(2)(g). The Hospital submitted a Plan of Correction to the Program, which the Program accepted.

2.7 On or about April 5, 2019, the Program completed a state complaint investigation of the Hospital for compliance with chapters 71.12 RCW and 246-322 WAC and investigated issues related to complaint no. 2019-4251. **This survey resulted in the issuance of the April SOD, which is incorporated by reference and attached to this CAP Agreement as Attachment 2.**

2.8 As documented in the April SOD, the Program surveyors identified deficiencies at the Hospital that did not meet the standards identified in chapters 71.12 RCW and 246-322 WAC. Based on the April SOD, the Program alleges the Hospital has failed or refused to comply with the following laws and rules: Chapter 71.12 RCW; WAC 246-322-035(1)(d), WAC 246-322-040(8)(i), WAC 246-322-170(1)(b), WAC 246-322-170(1)(c), WAC 246-322-170(2)(e), WAC 246-322-170(2)(f), WAC 246-322-210(3)(c), WAC 246-322-230(2)(a), and WAC 246-322-230(2)(e). The Hospital submitted a Plan of Correction to the Program, which the Program accepted.

2.9 The parties agree they share a mutual interest in ensuring there is access to needed behavioral health care and in-patient psychiatric beds, and ensuring the Hospital provides behavioral health care in a safe. It is the Program's position that the Hospital has struggled to consistently meet and sustain the minimum licensing standards established in chapter 71.12 RCW and chapter 246-322 WAC. The failure to meet minimum licensing standards authorizes the Secretary of Health, through his or her designees, to initiate action to deny, suspend, modify, or revoke the Hospital's license to operate a private psychiatric hospital.

2.10 Based on their shared mutual interest, and if possible, to avoid the uncertainty, burden, inconvenience, distraction, delays, and expense of enforcement action, the Parties enter into the following CAP Agreement.

### III. AGREEMENT

3.1 In consideration of the Parties' mutual interest of ensuring ongoing access to needed behavioral health care, and ensuring the Hospital provides the behavioral health care in a safe manner; and in consideration of the Parties' interest of avoiding, if possible, the uncertainty, burden, inconvenience, distraction, delays, and expense of enforcement action, **the Hospital will, as more thoroughly described in paragraphs 3.2 through 3.14:**

- 3.1.A. Retain one or more Program approved Independent Expert Consultants (IEC) to aid the Hospital with carrying out the actions described in this CAP Agreement and to aid the Hospital in creating and implementing policies, procedures, and practices that ensure ongoing access to needed, safe, behavioral health care;
- 3.1.B. In consultation with the IEC(s), perform an on-site gap analysis, perform root cause analyses of identified gaps, and cause the IEC(s) to submit a gap analysis report, including a copy of the gap analysis and root cause analyses, along with a list of recommendations for correcting identified gaps, to the Program;
- 3.1.C. Develop a Corrective Action Plan (CAP) based on the IEC(s) gap analysis report;
- 3.1.D. Require the IEC(s) to submit written reports to the Program regarding the Hospital's implementation of the CAP; and
- 3.1.E. Be responsible for all costs associated with complying with this agreement.

3.2 **Independent Expert Consultant Qualifications.** The Program will approve IEC(s) who meet the following qualifications:

- 3.2.A. The IEC(s) must not be affiliated with any accreditation organization;
- 3.2.B. The IEC(s) must be not be a current employee, former employee, current contractor or former contractor of the Hospital or the Program;
- 3.2.C. The IEC(s) shall not have a conflict of interest, including any financial, private, or personal interest that may affect or appear to affect the exercise of their duties and obligations under this agreement;
- 3.2.D. The IEC(s) must possess sufficient knowledge and expertise in hospital administration and management to identify and correct

- deficiencies in the Hospital's operations, including quality assessment and performance improvement (QAPI), nursing services, governing body, patient rights, medical staff, pharmaceutical services, and infection control;
- 3.2.E. The IEC(s) must have experience in health care staffing models and planning; and
- 3.2.F. The IEC(s) must be willing to work with the Hospital to perform an on-site gap analysis and a root cause analysis of identified gaps, and provide a list of recommendations to the Program upon the completion of its review of the hospital's operations.

**3.3 Process for Independent Expert Consultant Approval.** The Parties agree they will use the following process and timeframes for the approval of IEC(s):

- 3.3.A. The Hospital must submit a roster of proposed IEC(s) to the Program within 45 days from the effective date of this agreement;
- 3.3.B. The roster of IEC(s) will describe each proposed IEC's background and particular area of expertise;
- 3.3.C. The Hospital must submit the curriculum vitae showing the experience and credentials of each proposed IEC;
- 3.3.D. Within 14 days of receipt of the roster of proposed IEC(s) with supporting curriculum vitae(s), the Program will notify the Hospital in writing if the Program approves or rejects the proposed IEC(s);
- 3.3.E. The Hospital may submit an amended roster of proposed IEC(s) within 45 days of the date the Program notifies the Hospital in writing that it has rejected the Hospital's proposed IEC(s);
- 3.3.F. Within 14 days of receipt of the amended roster of Proposed IEC(s) with supporting curriculum vitae(s), the Program will notify the Hospital in writing if the Program approves or rejects the proposed IEC(s);
- 3.3.G. This agreement may be terminated by either party if the Program does not approve any IEC(s) after the Hospital's submission of the amended roster of proposed IEC(s); and
- 3.3.H. The Hospital has 21 days from the date of receiving notification that the Program has approved the IEC(s) to execute a contract with the IEC(s). The Hospital must provide a copy of the contract to the Program or otherwise provide written notification to the Program confirming the IEC(s) is retained and provide an outline of the scope of work the IEC(s) will perform. Amounts to be paid to the IEC by the Hospital will be excluded or redacted.

**3.4 Gap Analysis.** Within 75 days of executing a contract with the IEC(s), the Hospital and IEC(s) must perform an on-site gap analysis of the Hospital's operations. The Gap Analysis must analyze the structure and performance of the Hospital's systems and operations and identify all material gaps between its

operations, industry-accepted standards of practice, and compliance with state licensing requirements. The Gap Analysis must address, at a minimum:

- 3.4.A. Leadership/management and accountability mechanisms. This includes conducting an in-depth evaluation of the hospital's governing body, management team and leadership structure and their ability to oversee a Corrective Action Plan (see below) and recommending changes to the hospital's governing body membership, management or operations;
- 3.4.B. Quality and appropriateness of services;
- 3.4.C. Patient's rights protections;
- 3.4.D. Qualified and supportive staffing resources;
- 3.4.E. Staff training and education; and
- 3.4.F. Assessment of the Hospital's Quality Assessment and Performance Improvement Program (QAPI). This includes, but is not limited to, determining whether the program: continually operates and has adequate resources; effectively increases patient safety and improves quality of care; sufficiently demonstrates involvement by hospital leadership (including the governing body); widely disperses its activities throughout the hospital; adequately collects and analyzes data; diligently uses data to drive its decision making, including in its processes for determining the selection of tracking measures that concern tracking, measuring and analyzing adverse patient events; and clearly demonstrates the program has a process for developing, implementing and evaluating its performance improvement projects and activities.

**3.5 Root Cause Analysis.** The Hospital and IEC(s) must analyze the root causes of each gap identified by the Gap Analysis, meaning the obstacles and system failures that prevent or impede the Hospital from achieving and sustaining hospital services practices that meet or exceed state licensing requirements. The Root Cause Analysis must at least:

- 3.5.A. Identify and define problems;
- 3.5.B. Investigate and collect supporting information; and
- 3.5.C. Analyze and identify the root causes.

**3.6 Gap Analysis Report, Root Cause Analysis, and Recommendations Submission.** The Hospital and IEC(s) will submit a written Gap Analysis Report to the Program within 90 days of executing the IEC(s) contract. The report must include a copy of the Gap Analysis, Root Cause Analysis, and recommendations for correcting identified gaps that prevent or impede the Hospital from achieving and sustaining hospital services practices that meet state licensing requirements.

**3.7 Gap Analysis Report Approval.** The Program will accept or reject the Gap Analysis report within 14 days of receipt and provide the Hospital with written notification of its decision, including the rationale for the rejection of any parts of the report in sufficient detail that the Hospital can understand the rationale for any rejection. The Program may require a meeting with the Hospital and/or IEC(s) to discuss the report before accepting it. The Hospital and IEC(s) may submit one amended Gap Analysis Report within 21 days of receiving written notice the Gap Analysis Report is rejected. The Program will accept or reject the amended Gap Analysis Report within 14 days of receipt, with inclusion of the rationale of the rejection of any part of the report. Failure to submit an acceptable Gap Analysis Report may result in termination of this agreement by either party.

**3.8 Corrective Action Plan.** The Hospital and the IEC(s) must submit a Corrective Action Plan (CAP) to the Program for review and approval within 30 days of receiving written notification the Program accepted the Gap Analysis Report. The CAP must be based on the Gap Analysis Report, and must:

- 3.8.A. Identify the actions the Hospital must take to correct all deficiencies found in each service/functional area, and the person responsible for ensuring each deficiency is corrected;
- 3.8.B. Include specific plans regarding the development of a multi-disciplinary staffing committee. The multi-disciplinary staffing committee will include staff members licensed by the Washington State Department of Health and those who are not licensed by the Washington State Department of Health.
- 3.8.C. The development and implementation of a staffing model by the multi-disciplinary staffing committee;
- 3.8.D. Include specific plans regarding the admission criteria; and
- 3.8.E. Establish a timeline of activities including a detailed list of milestones and completion dates for each corrective action.

**3.9 Corrective Action Plan Approval.** The Program will accept or reject the CAP within 30 days of receipt and provide the Hospital written notification of its decision, including the rationale for the rejection of any parts of the report, in sufficient detail that the Hospital can understand the rationale for any rejection. If the Program rejects the CAP, the Program's written notification will include proposed revisions. The Hospital and IEC(s) may submit one amended CAP within 14 days of notification that the Program rejected its initial CAP. Failure to submit an acceptable CAP may result in termination of this agreement by either party.

**3.10 Corrective Action Plan- Ongoing Monitoring, Reports.** Upon approval by the Program, the CAP will be in effect for at least 12 months. During the 12 months, the Hospital's IEC(s) will conduct at least monthly visits to the Hospital to monitor the Hospital's implementation of and compliance with the CAP. During the 12 months, the IEC(s) shall submit monthly reports to the Program by the 10<sup>th</sup> day of each month. The reports must include:

- 3.10.A. Progression and status of the Hospital's implementation of the corrective action plan and staffing model;
- 3.10.B. Problems or other issues that may jeopardize successful implementation of the CAP;
- 3.10.C. Actions taken to address identified problems; and
- 3.10.D. Documentation of the number of IEC(s) time onsite.

The Program may contact the IEC(s) to discuss the content of the monthly reports and the Hospital's progress with implementing the CAP.

During the twelfth month, the Program will perform a site visit at the Hospital to verify the Hospital's continued and successful implementation of the CAP. Within seven (7) days of the site visit described in this paragraph, the Program will inform the Hospital of its decision to release the Hospital from this CAP Agreement. The Program will not unreasonably withhold the Hospital's release from this CAP Agreement, as set forth in paragraph 3.17(c).

**3.11 Release from Corrective Action Plan Agreement.** The Parties agree the Hospital will be released from this CAP Agreement under the terms and conditions identified in paragraph 3.10.

**3.12 Termination from the CAP Agreement.** During the term of this CAP Agreement, the Hospital or Program may terminate this CAP Agreement for the following reasons:

- 3.12.A. **Mutual Agreement.** The Parties may both agree to terminate this CAP Agreement at any time. If such mutual agreement is reached the Program will inform the Hospital of this mutual agreement in writing.
- 3.12.B. **Change of Ownership.** If during the term of this CAP Agreement, the Hospital elects to sell the Hospital resulting in a change of ownership that requires the purchaser to obtain a Certificate of Need under RCW 70.38 and a facility license from the Program, then the Hospital shall notify the Program and the Program will provide the Hospital with written notification that the CAP Agreement is terminated.
- 3.12.C. **Hospital Closure.** In the event that the Hospital ceases to operate and its license to operate a private psychiatric hospital becomes inactive or expired the Program will provide the Hospital with written notification that the CAP Agreement is terminated.
- 3.12.D. **Noncompliance with the CAP Agreement.** A failure to comply with the terms and conditions of this CAP Agreement shall be a basis for the Program to terminate this CAP Agreement and give notice to the Hospital of its intent to deny, suspend, modify or revoke the hospital's license to operate as a Private Psychiatric Hospital. Hospital retains all rights to appeal the Program's notice

of intent to take action under this sub-paragraph, including the Program's decision finding non-compliance with this CAP Agreement.

**3.13 Limited Admission of Facts.** In the event the Program moves to enforce this CAP Agreement under RCW 43.70.115, RCW 34.05, RCW 71.12, and WAC 246-322, then for the limited purpose of said enforcement action, the Parties will stipulate that the findings of fact in the March SOD and April SOD, incorporated by reference in paragraphs 2.9 and 2.12 of this CAP Agreement, are deemed admitted by the Hospital. This paragraph will not be construed as the Hospital admitting to any violations of law, nor will this paragraph be construed as the Hospital admitting to any findings of fact for any other legal action or purpose whatsoever.

**3.14 Scope of Agreement.** The Parties agree:

- 3.14.A. This CAP Agreement aims to resolve deficiencies identified by the Program as set forth in paragraphs 2.5 – 2.8.
- 3.14.B. Any deficiencies found by the Program after April 5, 2019 will not serve as a basis for the Program to terminate this CAP Agreement. This includes, but is not limited to, deficiencies identified by the IEC(s) as described in paragraph 3.10 and additional instances of noncompliance found by the Program that are not contained in the paragraphs 2.5 – 2.8 of this CAP Agreement.
- 3.14.C. The Hospital will be considered as being non-compliant with this CAP Agreement if the Hospital fails to comply with the terms set forth in paragraphs 3.1 – 3.10.
- 3.14.D. The Program will not use this CAP Agreement for any other purpose, including but not limited to, the Program's consideration or decision making in licensing, certificate of need, and/or enforcement action of other health care facilities or programs operated by or affiliated with the Hospital.

**3.15 Submission of Documents.** The Hospital shall send any documents, reports, or records required by this Agreement to: Hospital Program, Department of Health, PO Box 47873, Olympia, WA 98504-7873, or by email to [ClinicalCareFacilities@doh.wa.gov](mailto:ClinicalCareFacilities@doh.wa.gov)

**3.16 Liaison.** Each Party shall identify one individual responsible to serve as the point of contact regarding this CAP Agreement.

**3.17** In consideration of the Parties' mutual interest of ensuring ongoing access to needed behavioral health care, and ensuring the hospital provides the behavioral health care in a safe manner; and in consideration of the Parties' interest of avoiding, if possible, the uncertainty, burden, inconvenience, distraction, delays, and expense of enforcement action in connection with or related to findings

and deficiencies identified during the Program's surveys of the Hospital; and in consideration of the Hospital agreeing to the Corrective Action Plan described in this CAP Agreement, the Program will:

- a) Forbear from initiating enforcement action against the Hospital to deny, suspend, modify, or revoke its license (HPSY.FS.60739147) pursuant to RCW 43.70.115, RCW 34.05, RCW 71.12, and WAC 246-322 based on the deficiencies in the March SOD and April SOD;
- b) Not unreasonably withhold approval of any IEC(s), analyses, reports, or plans required by this agreement; and
- c) Not unreasonably withhold release from this agreement after the CAP has been in effect for 12 months, provided the Program may conduct a full state survey of the Hospital before the Program releases the Hospital from this CAP agreement.

#### IV. NOTICE AND ACCEPTANCE

4.1 The Parties are not obligated to enter into this agreement.

4.2 The Parties understand, as permitted under RCW 71.12.500, the Program may at any time conduct unannounced visits to the Hospital to monitor its compliance with chapter 71.12 RCW, chapter 246-322 WAC, and the Hospital's progress in implementation of and compliance with its CAP and this CAP Agreement.

4.3 The Parties understand the Program is not waiving or forbearing authority to initiate enforcement action under RCW 43.70.115, RCW 34.05, RCW 71.12, and WAC 246-322 for deficiencies identified after April 5, 2019. Similarly, the Hospital does not waive any rights to appeal and the ability to dispute alleged findings, alleged violations of law, and enforcement action of the Program for deficiencies identified after April 5, 2019.

4.4 The Parties understand that failure to comply with the terms and conditions of this CAP Agreement shall be a basis for the Program to give notice to the Hospital of its intent to deny, suspend, modify or revoke the hospital's license to operate as a Private Psychiatric Hospital. Similarly, the Hospital does not waive any rights to appeal and/or to dispute said enforcement action.

4.5 The Parties understand this CAP Agreement will become effective when signed by all Parties. Each individual who signs this agreement on behalf of each respective party represents that he or she has authority to bind that respective party to this Agreement.

4.6 The Parties understand that by entering this CAP Agreement the Hospital is not admitting to any violations of law.

Each party is signing this CAP Agreement on the date stated above that party's signature.

Dated: June 11, 2019

Nancy Tyson  
Nancy Tyson  
Executive Director  
Psychiatric Hospital Program  
State of Washington -- Department of  
Health

Dated: June 10, 2019

Richard Kresch, M.D.  
Vest Seattle LLC  
Richard Kresch, M.D.  
Vest Seattle LLC